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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3930

11 **SHAWNA LYNN PHILLIPS**
12 **4302 St. Paul Circle**
13 **Pittsburg, CA 94565**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 56911**
15 Respondent.

16 Complainant alleges:

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18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about June 21, 2004, the Board issued Pharmacy Technician License No. TCH
22 56911 to Shawna Lynn Phillips (Respondent). The License was in full force and effect at all
23 times relevant to the charges brought herein and will expire on April 30, 2012, unless renewed.

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25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code (Code) unless otherwise indicated.

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
12 the Code provides that any other license issued by the Board may be canceled by the Board if not
13 renewed within 60 days after its expiration, and will require a new application.

14 15 STATUTORY AND REGULATORY PROVISIONS

16 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
17 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
18 not be limited to, any of the following:

19 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
20 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
21 whether the act is a felony or misdemeanor or not.

22 (h) The administering to oneself, of any controlled substance, or the use of any dangerous
23 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
24 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
25 to the extent that the use impairs the ability of the person to conduct with safety to the public the
26 practice authorized by the license.

27 (j) The violation of any of the statutes of this state, of any other state, or of the United
28 States regulating controlled substances and dangerous drugs.

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable
3 federal and state laws and regulations governing pharmacy, including regulations established by
4 the board or by any other state or federal regulatory agency.

5 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
6 drug or dangerous device except upon the prescription of an authorized prescriber.

7 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
8 controlled substance, except that furnished upon a valid prescription/drug order.

9 10. Section 4327 of the Code makes it unlawful for any person, while on duty, to sell,
10 dispense or compound any drug while under the influence of a dangerous drug or alcohol.

11 11. Health and Safety Code section 11170 provides that no person shall prescribe,
12 administer, or furnish a controlled substance for himself or herself.

13 12. Health and Safety Code section 11173, subdivision (a), provides that no person shall
14 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
15 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
16 or subterfuge; or (2) by the concealment of a material fact.

17 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
18 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
19 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

20 14. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any
21 person to use or be under the influence of any controlled substance in Schedule II (Health and
22 Safety Code section 11055), subdivision (c), or any narcotic drug in Schedules III-V, except when
23 administered by or under the direction of an authorized licensee.

24 25 COST RECOVERY

26 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation of the licensing
28 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

1 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

2 16. Section 4021 of the Code states:

3 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
4 11053) of Division 10 of the Health and Safety Code.”

5 17. Section 4022 of the Code states, in pertinent part:

6 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
7 except veterinary drugs that are labeled as such, and includes the following:

8 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
9 prescription,’ ‘Rx only,’ or words of similar import.

10 ...

11 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
12 prescription or furnished pursuant to Section 4006.”

13 18. **Methadone** is a Schedule II controlled substance as designated by Health and Safety
14 Code section 11055(c)(14) and a dangerous drug as designated by Business and Professions Code
15 section 4022. It is a narcotic drug.

16
17 FACTUAL BACKGROUND

18 19. From an unknown start date until on or about February 3, 2010, Respondent worked
19 as a pharmacy technician at San Ramon Regional Medical Center Pharmacy (HSP 45979) in San
20 Ramon, CA, where she had access to controlled substances and dangerous drugs.

21 20. Respondent used her access to divert/steal controlled substances and dangerous drugs,
22 including **Methadone** or **methadone**-containing products.

23 21. The exact number of instances of diversion/theft by Respondent, and the full quantity
24 of controlled substances or dangerous drugs diverted/stolen, are not known, but in the course of
25 investigations conducted by the hospital and the Board, the following were reported:

26 a. Between in or around November 2009 and in or around January 2010, audits or
27 investigations of controlled substance inventories at the hospital discovered discrepancies in the
28 **methadone** tablets and liquid vials between the central (Omniceil) vault and the floor unit(s).

b. Further investigation revealed (i) that Respondent was the technician assigned to the secure vault each time the inventory record showed that the **methadone** dispensed from the central vault never made it to the designated floor unit(s); and (ii) secure passcodes assigned to pharmacists I.L. and I.O-K.¹ were used when those pharmacists were not on duty.

c. On or about January 28, 2010, Respondent was confronted by her supervisor(s). She subsequently admitted that she had a problem with addiction to **methadone**, had been self-administering **methadone** without prescription for approximately one (1) year (beginning with street **methadone** and progressing to the hospital's supply), that she had diverted both tablets and vials of liquid **methadone** (including one vial that she replaced in stock and refilled with saline), that she had used at least two (2) pharmacists' passcodes without their permission to accomplish the theft/diversion, and that she had self-administered **methadone** while on duty at the hospital.

d. On or about November 10, 2009, the hospital/pharmacy submitted a Report of Theft or Loss of Controlled Substances (DEA Form 106) to the DEA, and to the Board, listing a theft or loss of one 60 ml vial of **methadone HCL 10 mg/ml**, which had been tampered with (the contents were replaced with saline). On or about January 29, 2010, the hospital/pharmacy sent a Report of Theft or Loss of Controlled Substances (DEA Form 106) to the DEA, and to the Board, listing a theft or loss of 512 tablets **methadone HCL 10 mg**. All of these thefts were attributed to the diversion/theft conducted by Respondent during the tenure of her employment.

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

22. Respondent is subject to discipline under section 4301(f) of the Code, in that Respondent, as described in paragraphs 19 to 21 above, committed numerous acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

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¹ Full names will be provided to Respondent during discovery.

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1 SIXTH CAUSE FOR DISCIPLINE

2 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

3 27. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
4 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
5 19 to 21 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
6 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

7
8 SEVENTH CAUSE FOR DISCIPLINE

9 (Unlawful Use of Narcotic Controlled Substances)

10 28. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
11 and/or Health and Safety Code section 11550, in that, as described in paragraphs 19 to 21 above,
12 Respondent used or was under the influence of, conspired to use/be under the influence of, and/or
13 assisted in or abetted use/being under the influence of, certain identified controlled substances,
14 not administered by or under the direction of an authorized licensee.

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16 EIGHTH CAUSE FOR DISCIPLINE

17 (Unprofessional Conduct)

18 29. Respondent is subject to discipline under section 4301 of the Code in that
19 Respondent, as described in paragraphs 19 to 28 above, engaged in unprofessional conduct.

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23 PRAYER

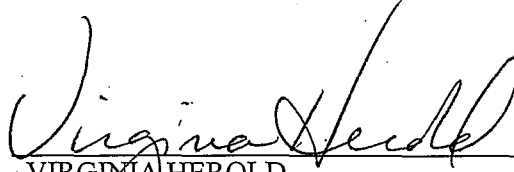
24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25 and that following the hearing, the Board of Pharmacy issue a decision:

26 1. Revoking or suspending Pharmacy Technician License Number TCH 56911, issued
27 to Shawna Lynn Phillips (Respondent);
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1 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
2 enforcement of this case, pursuant to Business and Professions Code section 125.3;

3 3. Taking such other and further action as is deemed necessary and proper.
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6 DATED: 4/27/11



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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